

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEW MEXICO**

YVONNE SANTILLANES-MONTANO,  
on behalf of R.S.,

Plaintiffs,

vs.

Civ. No. 08-00452 MV/RHS

BOARD OF EDUCATION OF WEST  
LAS VEGAS SCHOOL DISTRICT,

Defendants.

**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** comes before the Court on Plaintiffs' Motion for Default Judgment, filed October 20, 2008, [Doc. No. 7]. In their motion, Plaintiffs seek an entry of default judgement, presumably pursuant to Rule 55 of the Federal Rules of Civil Procedure. Plaintiffs' motion, however, is procedurally defective. Rule 55 requires two steps before entry of a default judgment. First, pursuant to Rule 55(a), the party seeking a default judgment must have the clerk enter the default by submitting the required proof that the opposing party has failed to plead or otherwise defend. *See* 10A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2682 (3d ed. 2007) ("Prior to obtaining a default judgment under either Rule 55(b)(1) or Rule 55(b)(2), there must be an entry of default as provided by Rule 55(a)."). Second, pursuant to Rule 55(b), the moving party may seek entry of judgment on the default under either subdivision (b)(1) or (b)(2) of the rule. Pursuant to local rule, a motion for default and a motion for default judgment must be filed separately. *See* Administrative Order 92-88 (requiring all practitioners before the Court to submit a separate pleading for each matter upon

which a ruling is sought).

**IT IS THEREFORE ORDERED** that Plaintiffs' Motion for Default Judgment, filed October 20, 2008, [Doc. No. 7], is hereby **DENIED** without prejudice as procedurally defective.

DATED this 24th day of October, 2008.



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MARTHA VAZQUEZ  
Chief District Court Judge

Attorneys for Plaintiffs:

Nancy L. Simmons  
David Meilleur

Attorney s for Defendant:

No appearances entered